

KENNETH LERNER
ATTORNEY AT LAW

052-94

600 ONE MAIN PLACE
101 S.W. MAIN ST.
PORTLAND, OR 97204
TEL: 503/ 223-0442
FAX: 503/ 226-4290

March 15, 1994

United States Sentencing Commission
Attn: Public Comments Section
1 Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

Dear Commissioners:

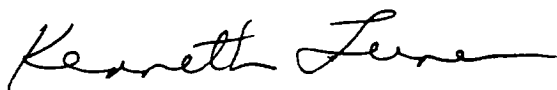
I have reviewed a proposed change in the guideline calculations for marijuana plants and am writing to comment on this proposition. I am currently a CJA attorney in the District of Oregon, and a former Federal Public Defender. I handle a great many cases in Federal Court and have had a great deal of experience with the marijuana guidelines.

I certainly encourage the commission to make an independent gradation for marijuana plants as suggested in the proposed guideline ranging, in order to eliminate the cliff effect. I think that this would be helpful, particularly in this district and others, where the practice is that U.S. Attorneys often do not allege the mandatory minimum amounts. In this circuit and in this district, this change would promote plea bargaining and avoid much undue hardship which the cliff effect creates, since the probation office in this district will not require the mandatory minimum terms of the statute under such circumstances.

I also wish to comment on some of the alternative approaches. The treatment of small seedlings, starts, clones, or other barely established plants on the same level as mature or maturing plants is particularly unjust. While all plants must certainly begin at this stage, many do not survive unless the operation is extremely sophisticated. Also, the cloning method that some growers use, never results in fully mature marijuana plants with the types of yields which government studies tend to show. These plants become growing flower stems of marijuana, harvested for their high resin content. Nevertheless, the dried weight of each plant is significantly less than 100 grams.

Let me close by saying that this is a welcome step in the right direction and I am glad that the sentencing commission is addressing this disparity.

Sincerely yours,



Kenneth Lerner

KL:jeb
corresp\sent-com.lt1

[269]